

ASSEMBLY BILL

No. 1216

Introduced by Assembly Member Fuentes

February 18, 2011

An act to amend Section 65863.11 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1216, as introduced, Fuentes. Land use: notice of proposed change: assisted housing developments.

The Planning and Zoning Law requires an owner of an assisted housing development, as defined, to provide specified entities notice of an opportunity to submit an offer to purchase the development, containing specified information, prior to the termination of a subsidy contract applicable to, the prepayment of a mortgage on, the expiration of rental restrictions applicable to, or, under specified circumstances, the sale or disposition of, the development. That law authorizes these requirements to be enforced either in law or in equity by specified entities.

This bill would additionally authorize any affected public entity, as defined, or any affected tenant, as defined, to enforce these requirements either in law or in equity.

The Planning and Zoning Law requires an owner selling, leasing, or otherwise disposing of an assisted housing development, prior to the close of escrow, to certify that the owner has complied with specified provisions of that law. That law also requires this certification to be recorded, to contain a legal description of the property, and to be indexed, as specified, and authorizes the certification to be relied upon by good faith purchasers and encumbrances for value, as specified.

This bill would prohibit a specified provision of that law from affecting the rights of a purchaser or encumbrancer for value who acts in good faith and without notice of a failure to comply with specified provisions of that law, regardless of whether the certification has been recorded.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65863.11 of the Government Code is
2 amended to read:
3 65863.11. (a) Terms used in this section shall be defined as
4 follows:
5 (1) “Assisted housing development” and “development” mean
6 a multifamily rental housing development as defined in paragraph
7 (3) of subdivision (a) of Section 65863.10.
8 (2) “Owner” means an individual, corporation, association,
9 partnership, joint venture, or business entity that holds title to an
10 assisted housing development.
11 (3) “Tenant” means a tenant, subtenant, lessee, sublessee, or
12 other person legally in possession or occupying the assisted housing
13 development.
14 (4) “Tenant association” means a group of tenants who have
15 formed a nonprofit corporation, cooperative corporation, or other
16 entity or organization, or a local nonprofit, regional, or national
17 organization whose purpose includes the acquisition of an assisted
18 housing development and that represents the interest of at least a
19 majority of the tenants in the assisted housing development.
20 (5) “Low or moderate income” means having an income as
21 defined in Section 50093 of the Health and Safety Code.
22 (6) “Very low income” means having an income as defined in
23 Section 50105 of the Health and Safety Code.
24 (7) “Local nonprofit organizations” means not-for-profit
25 corporations organized pursuant to Division 2 (commencing with
26 Section 5000) of Title 1 of the Corporations Code, that have as
27 their principal purpose the ownership, development, or
28 management of housing or community development projects for
29 persons and families of low or moderate income and very low
30 income, and which have a broadly representative board, a majority

1 of whose members are community based and have a proven track
2 record of local community service.

3 (8) “Local public agencies” means housing authorities,
4 redevelopment agencies, or any other agency of a city, county, or
5 city and county, whether general law or chartered, which are
6 authorized to own, develop, or manage housing or community
7 development projects for persons and families of low or moderate
8 income and very low income.

9 (9) “Regional or national organizations” means not-for-profit,
10 charitable corporations organized on a multicounty, state, or
11 multistate basis that have as their principal purpose the ownership,
12 development, or management of housing or community
13 development projects for persons and families of low or moderate
14 income and very low income.

15 (10) “Regional or national public agencies” means multicounty,
16 state, or multistate agencies that are authorized to own, develop,
17 or manage housing or community development projects for persons
18 and families of low or moderate income and very low income.

19 (11) “Use restriction” means any federal, state, or local statute,
20 regulation, ordinance, or contract that, as a condition of receipt of
21 any housing assistance, including a rental subsidy, mortgage
22 subsidy, or mortgage insurance, to an assisted housing
23 development, establishes maximum limitations on tenant income
24 as a condition of eligibility for occupancy of the units within a
25 development, imposes any restrictions on the maximum rents that
26 could be charged for any of the units within a development; or
27 requires that rents for any of the units within a development be
28 reviewed by any governmental body or agency before the rents
29 are implemented.

30 (12) “Profit-motivated organizations and individuals” means
31 individuals or two or more persons organized pursuant to Division
32 1 (commencing with Section 100) of Title 1 of, Division 3
33 (commencing with Section 1200) of Title 1 of, or Division 1
34 (commencing with Section 15001) of Title 2 of, the Corporations
35 Code, that carry on as a business for profit.

36 (13) “Department” means the Department of Housing and
37 Community Development.

38 (14) “Offer to purchase” means an offer from a qualified or
39 nonqualified entity that is nonbinding on the owner.

1 (15) “Expiration of rental restrictions” has the meaning given
2 in paragraph (5) of subdivision (a) of Section 65863.10.

3 (b) An owner of an assisted housing development shall not
4 terminate a subsidy contract or prepay the mortgage pursuant to
5 Section 65863.10, unless the owner or its agent shall first have
6 provided each of the entities listed in subdivision (d) an opportunity
7 to submit an offer to purchase the development, in compliance
8 with subdivisions (g) and (h). An owner of an assisted housing
9 development in which there will be the expiration of rental
10 restrictions must also provide each of the entities listed in
11 subdivision (d) an opportunity to submit an offer to purchase the
12 development, in compliance with subdivisions (g) and (h). An
13 owner who meets the requirements of Section 65863.13 shall be
14 exempt from this requirement.

15 (c) An owner of an assisted housing development shall not sell,
16 or otherwise dispose of, the development at any time within the
17 five years prior to the expiration of rental restrictions or at any
18 time if the owner is eligible for prepayment or termination within
19 five years unless the owner or its agent shall first have provided
20 each of the entities listed in subdivision (d) an opportunity to
21 submit an offer to purchase the development, in compliance with
22 this section. An owner who meets the requirements of Section
23 65863.13 shall be exempt from this requirement.

24 (d) The entities to whom an opportunity to purchase shall be
25 provided include only the following:

- 26 (1) The tenant association of the development.
27 (2) Local nonprofit organizations and public agencies.
28 (3) Regional or national nonprofit organizations and regional
29 or national public agencies.
30 (4) Profit-motivated organizations or individuals.

31 (e) For the purposes of this section, to qualify as a purchaser of
32 an assisted housing development, an entity listed in subdivision
33 (d) shall do all of the following:

34 (1) Be capable of managing the housing and related facilities
35 for its remaining useful life, either by itself or through a
36 management agent.

37 (2) Agree to obligate itself and any successors in interest to
38 maintain the affordability of the assisted housing development for
39 households of very low, low, or moderate income for either a
40 30-year period from the date that the purchaser took legal

1 possession of the housing or the remaining term of the existing
2 federal government assistance specified in subdivision (a) of
3 Section 65863.10, whichever is greater. The development shall be
4 continuously occupied in the approximate percentages that those
5 households who have occupied that development on the date the
6 owner gave notice of intent or the approximate percentages
7 specified in existing use restrictions, whichever is higher. This
8 obligation shall be recorded prior to the close of escrow in the
9 office of the county recorder of the county in which the
10 development is located and shall contain a legal description of the
11 property, indexed to the name of the owner as grantor. An owner
12 that obligates itself to an enforceable regulatory agreement that
13 will ensure for a period of not less than 30 years that rents for units
14 occupied by low- and very low income households or that are
15 vacant at the time of executing a purchase agreement will conform
16 with restrictions imposed by Section 42(f) of the Internal Revenue
17 Code shall be deemed in compliance with this paragraph. In
18 addition, the regulatory agreement shall contain provisions
19 requiring the renewal of rental subsidies, should they be available,
20 provided that assistance is at a level to maintain the project's fiscal
21 viability.

22 (3) Local nonprofit organizations and public agencies shall have
23 no member among their officers or directorate with a financial
24 interest in assisted housing developments that have terminated a
25 subsidy contract or prepaid a mortgage on the development without
26 continuing the low-income restrictions.

27 (f) If an assisted housing development is not economically
28 feasible, as defined in paragraph (3) of subdivision (h) of Section
29 17058 of the Revenue and Taxation Code, a purchaser shall be
30 entitled to remove one or more units from the rent and occupancy
31 requirements as is necessary for the development to become
32 economically feasible, provided that once the development is again
33 economically feasible, the purchaser shall designate the next
34 available units as low-income units up to the original number of
35 those units.

36 (g) (1) If an owner decides to terminate a subsidy contract, or
37 prepay the mortgage pursuant to Section 65863.10, or sell or
38 otherwise dispose of the assisted housing development pursuant
39 to subdivision (b) or (c), or if the owner has an assisted housing
40 development in which there will be the expiration of rental

1 restrictions, the owner shall first give notice of the opportunity to
2 offer to purchase to each qualified entity on the list provided to
3 the owner by the department, in accordance with subdivision (o),
4 as well as to those qualified entities that directly contact the owner.
5 The notice of the opportunity to offer to purchase must be given
6 prior to or concurrently with the notice required pursuant to Section
7 65863.10 for a period of at least 12 months. The owner shall
8 contact the department to obtain the list of qualified entities. The
9 notice shall conform to the requirements of subdivision (h) and
10 shall be sent to the entities by registered or certified mail, return
11 receipt requested. The owner shall also post a copy of the notice
12 in a conspicuous place in the common area of the development.

13 (2) If the owner already has a bona fide offer to purchase from
14 an entity prior to January 1, 2001, at the time the owner decides
15 to sell or otherwise dispose of the development, the owner shall
16 not be required to comply with this subdivision. However, the
17 owner shall notify the department of this exemption and provide
18 the department a copy of the offer.

19 (h) The initial notice of a bona fide opportunity to submit an
20 offer to purchase shall contain all of the following:

21 (1) A statement addressing all of the following:

22 (A) Whether the owner intends to maintain the current number
23 of affordable units and level of affordability.

24 (B) Whether the owner has an interest in selling the property.

25 (C) Whether the owner has executed a contract or agreement
26 of at least five years' duration with a public entity to continue or
27 replace subsidies to the property and to maintain an equal or greater
28 number of units at an equal or deeper level of affordability and, if
29 so, the length of the contract or agreement.

30 (2) A statement that each of the type of entities listed in
31 subdivision (d) has the right to purchase the development under
32 this section.

33 (3) (A) Except as provided in subparagraph (B), a statement
34 that the owner will make available to each of the types of entities
35 listed in subdivision (d), within 15 business days of receiving a
36 request therefor, that includes all of the following:

37 (i) Itemized lists of monthly operating expenses for the property.

38 (ii) Capital improvements, as determined by the owner, made
39 within each of the two preceding calendar years at the property.

40 (iii) The amount of project property reserves.

1 (iv) Copies of the two most recent financial and physical
2 inspection reports on the property, if any, filed with a federal, state,
3 or local agency.

4 (v) The most recent rent roll for the property listing the rent
5 paid for each unit and the subsidy, if any, paid by a governmental
6 agency as of the date the notice of intent was made pursuant to
7 Section 65863.10.

8 (vi) A statement of the vacancy rate at the property for each of
9 the two preceding calendar years.

10 (vii) The terms of assumable financing, if any, the terms of the
11 subsidy contract, if any, and proposed improvements to the
12 property to be made by the owner in connection with the sale, if
13 any.

14 (B) Subparagraph (A) shall not apply if 25 percent or less of
15 the units on the property are subject to affordability restrictions or
16 a rent or mortgage subsidy contract.

17 (C) A corporation authorized pursuant to Section 52550 of the
18 Health and Safety Code or a public entity may share information
19 obtained pursuant to subparagraph (A) with other prospective
20 purchasers, and shall not be required to sign a confidentiality
21 agreement as a condition of receiving or sharing this information,
22 provided that the information is used for the purpose of attempting
23 to preserve the affordability of the property.

24 (4) A statement that the owner has satisfied all notice
25 requirements pursuant to subdivision (b) of Section 65863.10,
26 unless the notice of opportunity to submit an offer to purchase is
27 delivered more than 12 months prior to the anticipated date of
28 termination, prepayment, or expiration of rental restrictions.

29 (i) If a qualified entity elects to purchase an assisted housing
30 development, it shall make a bona fide offer to purchase the
31 development. A qualified entity's bona fide offer to purchase shall
32 identify whether it is a tenant association, nonprofit organization,
33 public agency, or profit-motivated organizations or individuals
34 and shall certify, under penalty of perjury, that it is qualified
35 pursuant to subdivision (e). During the first 180 days from the date
36 of an owner's bona fide notice of the opportunity to submit an
37 offer to purchase, an owner shall accept a bona fide offer to
38 purchase only from a qualified entity. During this 180-day period,
39 the owner shall not accept offers from any other entity.

1 (j) When a bona fide offer to purchase has been made to an
2 owner, and the offer is accepted, a purchase agreement shall be
3 executed.

4 (k) Either the owner or the qualified entity may request that the
5 fair market value of the property, as a development, be determined
6 by an independent appraiser qualified to perform multifamily
7 housing appraisals, who shall be selected and paid by the requesting
8 party. All appraisers shall possess qualifications equivalent to those
9 required by the members of the Appraisers Institute. This appraisal
10 shall be nonbinding on either party with respect to the sales price
11 of the development offered in the bona fide offer to purchase, or
12 the acceptance or rejection of the offer.

13 (l) During the 180-day period following the initial 180-day
14 period required pursuant to subdivision (i), an owner may accept
15 an offer from a person or an entity that does not qualify under
16 subdivision (e). This acceptance shall be made subject to the owner
17 providing each qualified entity that made a bona fide offer to
18 purchase the first opportunity to purchase the development at the
19 same terms and conditions as the pending offer to purchase, unless
20 these terms and conditions are modified by mutual consent. The
21 owner shall notify in writing those qualified entities of the terms
22 and conditions of the pending offer to purchase, sent by registered
23 or certified mail, return receipt requested. The qualified entity shall
24 have 30 days from the date the notice is mailed to submit a bona
25 fide offer to purchase and that offer shall be accepted by the owner.
26 The owner shall not be required to comply with the provisions of
27 this subdivision if the person or the entity making the offer during
28 this time period agrees to maintain the development for persons
29 and families of very low, low, and moderate income in accordance
30 with paragraph (2) of subdivision (e). The owner shall notify the
31 department regarding how the buyer is meeting the requirements
32 of paragraph (2) of subdivision (e).

33 (m) This section shall not apply to any of the following: a
34 government taking by eminent domain or negotiated purchase; a
35 forced sale pursuant to a foreclosure; a transfer by gift, devise, or
36 operation of law; a sale to a person who would be included within
37 the table of descent and distribution if there were to be a death
38 intestate of an owner; or an owner who certifies, under penalty of
39 perjury, the existence of a financial emergency during the period
40 covered by the first right of refusal requiring immediate access to

1 the proceeds of the sale of the development. The certification shall
2 be made pursuant to subdivision (p).

3 (n) Prior to the close of escrow, an owner selling, leasing, or
4 otherwise disposing of a development to a purchaser who does not
5 qualify under subdivision (e) shall certify under penalty of perjury
6 that the owner has complied with all provisions of this section and
7 Section 65863.10. This certification shall be recorded and shall
8 contain a legal description of the property, shall be indexed to the
9 name of the owner as grantor, and may be relied upon by good
10 faith purchasers and encumbrances for value and without notice
11 of a failure to comply with the provisions of this section.
12 *Regardless of whether a certification has been recorded as*
13 *required under this subdivision, this section shall not affect the*
14 *rights of a purchaser or encumbrancer for value who acts in good*
15 *faith and without notice of a failure to comply with this section.*

16 Any person or entity acting solely in the capacity of an escrow
17 agent for the transfer of real property subject to this section shall
18 not be liable for any failure to comply with this section unless the
19 escrow agent either had actual knowledge of the requirements of
20 this section or acted contrary to written escrow instructions
21 concerning the provisions of this section.

22 (o) The department shall undertake the following responsibilities
23 and duties:

24 (1) Maintain a form containing a summary of rights and
25 obligations under this section and make that information available
26 to owners of assisted housing developments as well as to tenant
27 associations, local nonprofit organizations, regional or national
28 nonprofit organizations, public agencies, and other entities with
29 an interest in preserving the state's subsidized housing.

30 (2) Compile, maintain, and update a list of entities in subdivision
31 (d) that have either contacted the department with an expressed
32 interest in purchasing a development in the subject area or have
33 been identified by the department as potentially having an interest
34 in participating in a right-of-first-refusal program. The department
35 shall publicize the existence of the list statewide. Upon receipt of
36 a notice of intent under Section 65863.10, the department shall
37 make the list available to the owner proposing the termination,
38 prepayment, or removal of government assistance or to the owner
39 of an assisted housing development in which there will be the
40 expiration of rental restrictions. If the department does not make

1 the list available at any time, the owner shall only be required to
2 send a written copy of the opportunity to submit an offer to
3 purchase notice to the qualified entities which directly contact the
4 owner and to post a copy of the notice in the common area pursuant
5 to subdivision (g).

6 (p) ~~(1) The provisions of this~~ This section may be enforced
7 either in law or in equity by any qualified entity entitled to exercise
8 the opportunity to purchase and right of first refusal under this
9 section, *or any affected public entity, as defined in paragraph (2)*
10 *of subdivision (a) of Section 65863.10, or any affected tenant, as*
11 *defined in paragraph (2) of subdivision (a) of Section 65863.10,*
12 that has been adversely affected by an owner's failure to comply
13 with this section.

14 (2) An owner may rely on the statements, claims, or
15 representations of any person or entity that the person or entity is
16 a qualified entity as specified in subdivision (d), unless the owner
17 has actual knowledge that the purchaser is not a qualified entity.

18 ~~(3) If the person or entity is not an entity as specified in~~
19 ~~subdivision (d), that fact, in the absence of actual knowledge as~~
20 ~~described in paragraph (2), shall not give rise to any claim against~~
21 ~~the owner for a violation of this section.~~

22 (q) It is the intent of the Legislature that the provisions of this
23 section are in addition to, but not preemptive of, applicable federal
24 laws governing the sale, or other disposition of a development that
25 would result in either (1) a discontinuance of its use as an assisted
26 housing development or (2) the termination or expiration of any
27 low-income use restrictions that apply to the development.